

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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TATAYANA MOORE, *et al.*,

Plaintiffs,

vs.

CITY OF CLEVELAND, *et al.*,

Defendants.

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CASE NO. 1:18-CV-1849

OPINION & ORDER  
[Resolving Doc. [84](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiffs, former recruits at the Cleveland Police Academy, brought this suit under 20 U.S.C. § 1983. With their complaint, they allege that Defendants violated their procedural due process rights by terminating them on plagiarism charges without giving them notice and an opportunity for a hearing.

The Court granted summary judgment for Defendants.<sup>1</sup> Defendants now move for attorney's fees and \$14,856.49 in costs.<sup>2</sup>

District courts may award attorney's fees to a prevailing defendant in § 1983 actions,<sup>3</sup> but only where the plaintiff's action was "frivolous, unreasonable, or without foundation."<sup>4</sup>

Plaintiffs' action was none of those things. Plaintiffs raised close questions of state law and federal constitutional law. Plaintiffs' property-interest claim turned on a complex

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<sup>1</sup> Doc. 82.

<sup>2</sup> Doc. 84. Plaintiffs oppose. Doc. 85.

<sup>3</sup> See 42 U.S.C. 1988 (providing that "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of costs" in § 1983 actions).

<sup>4</sup> *Garner v. Cuyahoga Cty. Juvenile Court*, 554 F.3d 624, 636 (6th Cir. 2009) (quoting *Wayne v. Vill. of Sebring*, 36 F.3d 517, 530 (6th Cir.1994)). To determine whether the action is frivolous, the Court considers, *inter alia*, "whether the issue is one of first impression requiring judicial resolution, [and] whether the controversy is sufficiently based upon a real threat of injury to the plaintiff[.]" *Id.*

Gwin, J.

Cleveland Civil Service Rules interpretation issue. Their liberty-interest claim involved a factually close claim on a legal issue that has divided the circuits.<sup>5</sup> The Court denies Defendants' sought attorney's fees.

Under Federal Rule of Civil Procedure 54(d)(1), the Court generally awards costs to the prevailing party.<sup>6</sup> However, the Court may decline to do so when it would be inequitable under all circumstances in the case.

While Defendants did not bog down the case or "inject[] unmeritorious issues,"<sup>7</sup> the other relevant factors disfavor awarding costs.

First, the claimed expenses are "unnecessary or unreasonably large."<sup>8</sup> Defendants spent \$3,658.86 scanning Plaintiffs' academy notebooks and \$7,860.13 on hearing and deposition transcripts; neither played a substantive role in their summary judgment motion. Second, as discussed, the case was "close and difficult."<sup>9</sup> Third, Plaintiffs litigated the case in good faith.<sup>10</sup> Finally, the case had public importance.<sup>11</sup> The public has an interest in the integrity of the Cleveland Police Academy and the fairness of its disciplinary procedures.

Thus, the Court **DENIES** Defendant's motion for attorney's fees and costs.

IT IS SO ORDERED.

Dated: June 19, 2019

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>5</sup> See generally Doc. 82.

<sup>6</sup> Fed. R. Civ. P. 54(d)(1) (providing that costs other than attorney's fees "should be allowed to the prevailing party").

<sup>7</sup> *White & White v. Am. Hosp. Supply Corp.*, 786 F.2d 728, 730 (6th Cir. 1986).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 733 (public benefit is one factor courts may consider when awarding costs).